

NEW YORK STATE RACING AND WAGERING BOARD
DIVISION OF THOROUGHBRED RACING

IN THE MATTER OF RICHARD E. DUTROW, JR.

BOARD ORDER
MO 44-2011

Upon the Finding and Order of the New York State Racing and Wagering Board ("Board") Mtr. of Richard E. Dutrow, Jr. (MO 44-2011) dated October 12, 2011, having been stayed by court order upon the filing of an article 78 petition denoted Mtr. of Richard E. Dutrow v. New York State Racing and Wagering Board; the court having confirmed and upheld the Board action on July 19, 2012 (see 97 A.D.3d 1034 [3rd Dep't 2012]); the Court of Appeals having sua sponte dismissed his appeal upon the ground that no substantial constitutional question was directly involved on October 23, 2012 (see 2012 NY Slip Op 58376); and the Court of Appeals having denied his motion for leave to appeal on January 8, 2013 (Mo. No. 2012-1164); and Mr. Dutrow having been duly served with a copy of the Court of Appeals' decision and order with notice of entry, it is hereby

ORDERED, that the Board determines that, although the Hearing Officer did not expressly find and conclude that the facts, as he found them, establish that the charged statutes and rules were violated, and only implied this in his Report, the Board, for the sake of clarity and to avoid any ambiguity, hereby expressly finds and concludes that such facts establish that the charged statutes and rules were violated by respondent;

ORDERED, that on November 20, 2010, respondent Richard E. Dutrow, Jr. violated 9 NYCRR §§ 4043.2(g)(4) and 4043.4, in that, the horse "Fastus Cactus," trained by him, competed in the 3rd race at Aqueduct Racetrack with the drug butorphanol (a/k/a torbugesic) having been administered within 96 hours before the scheduled post time of its race; and the ruling (AQ 25-2011) of the State Steward at Aqueduct Racetrack that he committed this violation is affirmed;

ORDERED, that in addition to the other portion of his penalty, which is set forth below, the Board imposes for this violation a fine of twenty-five thousand dollars (\$25,000);

ORDERED, that on November 3, 2010, respondent Richard E. Dutrow, Jr. violated 9 NYCRR § 4012.1(a)(1), in that, while not a veterinarian and having no written permission from the stewards, he had and possessed on the premises of a franchised race track equipment usable for infusion and hypodermic injection into a horse, to wit, three syringes in his desk in Room J, Barn 10, at Aqueduct Racetrack; and the ruling (AQ 26-2011) of the State Steward at Aqueduct Racetrack that he committed this violation is affirmed;

ORDERED, that on November 3, 2010, respondent Richard E. Dutrow, Jr. violated 9 NYCRR § 4012.1(c), in that, he had and possessed on the premises of a franchised race track an unlabeled container of drugs, to wit, three unlabeled syringes loaded with the drug xyzaline (a/k/a rompun) in his desk in Room J, Barn 10, at Aqueduct Racetrack;

ORDERED, that in addition to the other portion of his penalty, which is set forth below, the Board imposes for respondent's two violations on November 3, 2010, another fine of twenty-five thousand dollars (\$25,000);

ORDERED, that based on the foregoing and his extensive history of rule violations, respondent Richard E. Dutrow, Jr. is a person whose conduct at race tracks in New York State and elsewhere has been improper, obnoxious, unbecoming, and detrimental to the best interests of racing, pursuant to Racing Law § 220(2) and 9 NYCRR § 4003.46 and, therefore, he shall not enter or remain upon the premises of any licensed New York race track and upon discovery or recognition he shall be forthwith ejected from any such premises;

ORDERED, that this exclusion and/or expulsion of respondent Richard E. Dutrow, Jr. from licensed New York race tracks, scheduled in the Board's Findings and Order at the conclusion of his

de novo administrative adjudicatory proceeding to begin October 18, 2011, having been stayed by court order from taking effect, shall take effect on this 17th day of January, 2013;

ORDERED, that based on the foregoing and his extensive history of rule violations, respondent Richard E. Dutrow, Jr.'s character and general fitness are such that his participation in pari-mutuel racing is inconsistent with the public interest, convenience and necessity and with the best interests of racing generally, contrary to Racing Law § 220(2) and 9 NYCRR §§ 4002.8 and 4002.9;

ORDERED, that based on his foregoing violations and his extensive history of rule violations, and as another portion of his penalty herein, respondent Richard E. Dutrow, Jr.'s occupational license(s) to participate in pari-mutuel racing are hereby revoked, and this revocation of his occupational licenses(s), scheduled in the Board's Findings and Order at the conclusion of his de novo administrative adjudicatory proceeding to begin October 18, 2011, having been stayed by court order from taking effect, shall take effect on this 17th day of January, 2013;

ORDERED, that based on his foregoing violations and his extensive history of rule violations, and as the last portion of his penalty herein, respondent Richard E. Dutrow, Jr. shall be and hereby is declared ineligible to reapply for any license issued by the Board for ten years, to wit, until January 18, 2023; the Board having determined to provide this more lenient period of ineligibility, rather than the permanent license revocation recommended by the Hearing Officer, in order to provide for the possibility that the respondent may rehabilitate himself and deserve reconsideration notwithstanding the severity of his misconduct to date; and

ORDERED, that during the period of his revocation, respondent Richard E. Dutrow, Jr. shall not directly or indirectly participate in New York pari-mutuel horse racing, he is denied the privileges and use of the grounds of all racetracks, and he is forbidden to participate in any share of

purses or other payment. Every horse is denied the privileges of the grounds and shall not participate in pari-mutuel racing in New York, further, that is (a) owned or trained by him, or any individual who serves as his agent or employee, during his revocation; or (b) for which he, during his revocation, is involved, directly or indirectly, with its training, including but not limited to any arrangements made to care for, train, enter, race, invoice, collect fees or payments, manage funds, employ or insure workers, provide advice or information, or otherwise assist with any aspect of the training of the horse.

DATED: SCHENECTADY, NEW YORK
January 17, 2013


KRISTEN M. BUCKLEY
ACTING SECRETARY TO THE BOARD

TO: Richard E. Dutrow, Jr.

Michael L. Koenig, Esq.
Hinckley, Allen & Synder, LLP
30 South Pearl Street, Suite 901
Albany, NY 12207-3492